IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.03.2015

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.5612 of 2015

Tvl. Vinayaga Metals,
represented by its proprietor,
Thiru.M.Ramalingam,
No.210, Bazaar Street,
Kurinjipadi, Cuddalore Taluk. ... Petitioner

vs.

1.The Deputy Commercial Tax Officer,
Cuddalore Taluk Assessment Circle,
1, Commercial Taxes Buildings,
Sub Jail Road, Manjakuppam,
Cuddalore - 607 001.

2.The Assistant Commissioner
(Commercial Taxes),
Cuddalore Taluk Assessment Circle,
1, Commercial Taxes Buildings,
Sub Jail Road, Manjakuppam,
Cuddalore - 607 001. ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records in respect of the impugned Revised Assessment Order Tin No.33364400929/2012-13 dated 29.05.2014 of the first respondent under the Tamil Nadu Value Added Tax Act, 2006, quash the same.

For Petitioner : Mr.S.P.Asokan

For Respondents : Mr.Manoharan Sundaram
Additional Government Pleader (Taxes)

O R D E R

Writ petitioner has come forward with this petition seeking to quash the impugned Revised Assessment Order of the first respondent dated 29.05.2014.

2. Heard learned counsel for the petitioner and learned Additional Government Pleader (Taxes).

3. Learned counsel for petitioner submits that the petitioner is having objection to the impugned order passed by the first respondent revising the original assessment order passed by the second respondent as the first respondent is subordinate to the second respondent. The order suffers from serious jurisdictional flaw as it has been passed by the first respondent, who is inferior in official rank to that of the second respondent. Learned counsel drew the attention of this Court to the provisions of Section 22(2) and 27(1)(a) of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as "Act").

4. In reply, the learned Additional Government Pleader (Taxes) submitted that when both authorities have got concurrent jurisdiction, it cannot be said that the order passed by the first respondent is bad in law. Learned Additional Government Pleader (Taxes) drew the attention of this Court to Sections 2(5) and 48 of the Act, which are extracted below;

> "Sec.2(5) "assessing authority" means any person authorised by the Government or by the Commissioner to make any assessment under this Act.
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> Section 48. Appointment of Commissioner of Commercial Taxes, Additional Commissioners of Commercial Taxes, Appellate Joint Commissioners of Commercial Taxes, Joint Commissioners of Commercial Taxes, Appellate Deputy Commissioner of Commercial Taxes, Deputy Commissioners of Commercial Taxes and Assistant Commissioners of Commercial Taxes.- The Government may appoint a Commissioner of Commercial Taxes and as many Additional Commissioners of Commercial Taxes, Appellate Joint Commissioners of Commercial Taxes, Joint Commissioners of Commercial Taxes, Joint Commissioners of Commercial Taxes (Enforcement), Appellate Deputy Commissioners of Commercial Taxes, Territorial Deputy Commissioners of Commercial Taxes, Administrative Deputy Commissioners of Commercial Taxes, Deputy Commissioners of Commercial Taxes (Assessment), Deputy Commissioners of Commercial Taxes (Enforcement) and Assistant Commissioners of Commercial Taxes as they think fit, for the purpose of performing the functions respectively conferred on them by or under this Act. The Commissioner of Commercial Taxes shall perform the functions conferred on him throughout the State, and the other officers shall perform their functions within such local limits as the Government or any authority or officer empowered in this behalf, may assign to them."

5. In reply, learned counsel for the petitioner submitted that there is no dispute with regard to the fact that both the respondents have got concurrent jurisdiction. However, once an order has been passed by the superior officer, the officer, lower in rank, cannot decide the application under Section 27 of the Act with regard to escape turn over. Learned counsel also relied on the judgment of the Allahabad High court in Commissioner of Sales Tax vs. Kumar Brothers [1983 (52) STC 340 (All)] and the judgment of the

Delhi High Court in Valvoline Cummins Limited vs. Deputy Commissioner of Income Tax and another [2008 (171) Taxman 241 (Delhi)].

6. It is not in dispute that the order has been passed by the first respondent, who is admittedly lower in rank to that of the second respondent. Nowhere in the provisions of the Act, it is stated that an officer lower in rank cannot decide the application. The provision to Section 2(5) of the Act makes it very clear that any assessing officer is empowered to make assessment under this Act. However, the Allahabad High Court in the decision cited supra has held as follows:

> "6. The conferment of power under Section 30 to set aside an ex parte order carries with it the inherent limitation that where that order has already been affirmed on merits by a superior authority contemplated under the Act, it would not be permissible for the inferior authority, nevertheless, to set it aside. Any other construction of the provision would lead to undesirable results. The conferment of concurrent jurisdiction cannot be said to mean that the inferior authority would be able to take a view different from the one taken by the superior authority in respect of the same order unless there is a specific provision enabling it to do so. The Uttar Pradesh Sales Tax Act, as its stands toady, does not contain a provision permitting an inferior authority to set aside an order which has, on merits, been affirmed by the superior authority."

7. The Delhi High Court in the decision cited supra has held as follows:

> "28. On the issue of 'concurrent' jurisdiction between the Additional Commissioner and the Deputy Commissioner, learned counsel for the assessee relied upon a decision of the Calcutta High Court in Berger Paints India Limited and Ors. v. Assistant Commissioner of Income Tax and Ors. MANU/WB/0279/2000 : [2000] 246ITR133 (Cal). The Calcutta High Court had explained the meaning of the expression 'concurrent' to mean two authorities having equal powers to deal with a situation but the same work cannot be divided between them. This is what the Calcutta High Court had to say:
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> > Concurrent jurisdiction means a sub-ordinate authority can deal with the matter equally with any superior authority in its entirety so that either one of such jurisdictions can be invoked. It cannot be construed as concurrent jurisdiction when one part of the assessment will be dealt with by one superior officer and the other part will be dealt with by one subordinate officer.

29. It appears to us quite clearly that there is a distinction between concurrent exercise of power and joint exercise of power. When power has been conferred upon two authorities concurrently, either one of them can exercise that power and once a decision is taken to exercise the power by any one of those authorities, that exercise must be terminated by that authority only. It is not that one authority can start exercising a power and the other authority having concurrent jurisdiction can conclude the exercise of that power. This perhaps may be permissible in a situation where both the authorities jointly exercise power but it certainly is not permissible where both the authorities concurrently exercise power. One example that immediately comes to the mind is that of grant of anticipatory bail. Both the Sessions Judge and the High Court have concurrent power. It is not as if a part of that power can be exercised by the High Court and the balance power can be exercised by the Sessions Judge. If the High Court is seized of an application for anticipatory bail it must deal with it and similarly if the Sessions Judge is seized of an anticipatory bail, he must deal with it. There can be no joint exercise of power both by the High Court as well as by the Sessions Judge in respect of the same application for anticipatory bail.”

In view of the decisions extracted supra, this Court finds much force in the contention of the petitioner. Accordingly, this Writ Petition is allowed. The Revised Assessment Order of the first respondent dated 29.05.2014, is set aside and the matter is remanded to the second respondent to consider the case afresh and pass appropriate orders on merits and in accordance with law after affording the petitioner an opportunity of being heard. The petitioner is directed to appear before the second respondent on 27.03.2015. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

gm

To

1.The Deputy Commercial Tax Officer,

Cuddalore Taluk Assessment Circle,
1, Commercial Taxes Buildings,
Sub Jail Road, Manjakuppam,
Cuddalore - 607 001.

2.The Assistant Commissioner
(Commercial Taxes),
Cuddalore Taluk Assessment Circle,
1, Commercial Taxes Buildings,
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Cuddalore - 607 001.

1 cc to mr.S.P. Asokan, Advocate, Sr. 11753
1 cc to the Spl.Government Pleader, Sr. 11974

GP (CO)
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